

UNITED STATES COURT OF APPEALS

APR 4 2003

TENTH CIRCUIT

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BYRON LEE KING,

Defendant-Appellant.

No. 02-4079
(D.C. No. 01-CV-78-J)
(D. Utah)

ORDER AND JUDGMENT*

Before **TACHA**, Chief Circuit Judge, **HOLLOWAY** and **McKAY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f). The case is therefore submitted without oral argument.

This is a 28 U.S.C. § 2255 prisoner appeal. Mr. King pled guilty to one count of possession of methamphetamine with intent to distribute in violation of

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

21 U.S.C. § 841(a)(1). Mr. King was sentenced to the statutory minimum of 120 months of imprisonment. Mr. King did not appeal.

In his § 2255 motion, Mr. King requested that the court vacate his sentence based on claims that (1) the indictment failed to state the type of methamphetamine (injectable versus non-injectable), (2) his sentence exceeded the statutory maximum, and (3) the court lacked jurisdiction to sentence him. The district court found no merit in Mr. King's substantive arguments, but did discover an error in his sentence. The district court granted the § 2255 motion and ordered Mr. King's sentence to be reduced to 96 months; it denied the remainder of the motion. Finding no merit in any of Mr. King's arguments, the district court declined to grant him a certificate of appealability. Petitioner then applied to this court for a certificate of appealability.

In order for this court to grant a certificate of appealability, Petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To do so, Petitioner must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quotations omitted).

We have carefully reviewed the briefs, the district court's disposition, and

the record on appeal. Nothing in the facts, the record on appeal, or the briefs raises an issue which meets our standards for the grant of a certificate of appealability. We conclude that for substantially the same reasons as set forth by the district court in its Orders of April 30 and July 31, 2002, we cannot say “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner.” Id.

We DENY Petitioner’s request for a certificate of appealability and DISMISS the appeal.

Entered for the Court

Monroe G. McKay
Circuit Judge